

REMARKS

In preparing the brief on Appeal, Applicants realized that claim 44 included a requirement that had no support in the specification. Consequently, claim 44 and the claims dependent on it, i.e. claims 45-51, are canceled herewith.

Subsequent to receiving the March 7, 2005, advisory action, the undersigned attorney for applicant spoke twice on the telephone with Examiner Crowell. During both conversations, Examiner Crowell said that if the changes set forth in the advisory action were made, the rejection against independent claims 21 and 33 would be overcome. During the second conversation, attorney for applicants (after discussing the matter with his client) advised the examiner that there was no need to make the suggested changes. Examiner Crowell then advised attorney for applicants to proceed with the Appeal Brief.

In reviewing the suggested changes set forth in the advisory action, it appears that the Examiner is attempting to limit applicants' coverage through the use of 35 USC 112, paragraph 2. Such a use of 35 USC 112, paragraph 2, is unwarranted and has been refuted by the Court of Appeals for the Federal Circuit. The test to determine patentability under 35 USC 112, paragraph 2, is whether a member of the public can determine whether a product it is making or plans to make infringes or will infringe the claim. The advisory action gives no reason why a member of the public would not be able to adhere to this test. Accordingly, any rejection under 35 USC 112, paragraph 2, based on the advisory action would appear to be inappropriate.

Based on the foregoing amendments and remarks, as well as the arguments set forth in the accompanying Appeal Brief, issuance of a Notice of Allowance by the Examiner is in order. Entry of the present amendment is also in order because it does not require consideration of new issues or a new search.

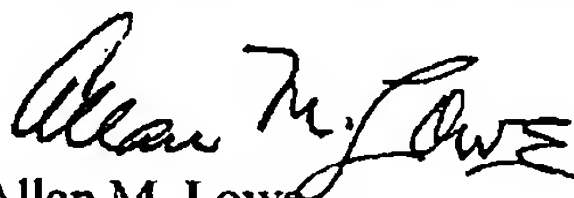
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The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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